IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WORLDCOM TECHNOLOGIES, INC., et al.	:	CIVIL ACTION
v.	:	
INTELNET INTERNATIONAL, INC., et al.	:	NO. 00-2284

MEMORANDUM AND ORDER

BECHTLE, J. February , 2001

Presently before the court is defendants Intelnet International, Inc., et al.'s Motion to Reconsider Defendants' Motion for This Court to Abstain from Exercising Jurisdiction Over This Matter; plaintiffs Worldcom Technologies, Inc., et al.'s Brief in Opposition thereto; defendants' reply to plaintiffs' brief; and defendants' supplemental memorandum in support of its motion. For the reasons set forth below, the court will deny the motion.

I. BACKGROUND

Worldcom Technologies, Inc. ("Worldcom") and MCI Telecommunications Corp. ("MCI") commenced this action against Intelnet International, Inc. ("Intelnet") and Associated Business Telephone Systems Corp. ("ABTS") to recover monies allegedly owed under contracts for long distance telecommunications services.[1]

[1] MCI Worldcom, Inc. ("MCI Worldcom") is the successor corporation to a 1998 merger between MCI, Worldcom and other entities. It owns and operates a long distance tele-communications network. MCI Worldcom avers that Intelnet is the

The Complaint seeks recovery under theories of breach of tariff/express contract, quantum meruit and unjust enrichment.

Pursuant to an agreement executed in January 1993, MCI sold long distance telecommunications services to ABTS, which then resold those services to the public. Worldcom and Intelnet entered a similar agreement in March 1998, under which Intelnet resold services provided by Worldcom. Both agreements stated that service would be provided pursuant to tariffs filed by MCI and Worldcom with the Federal Communications Commission ("FCC").

This case represents part of a larger dispute between the parties, which is the subject matter of other suits that have been consolidated in New Jersey. Thus, the procedural background of the parties' legal dispute is rather complex. The court will first discuss the suits filed in New Jersey and New York and then discuss the instant case.

A. Intelnet I

In April 1999, Intelnet filed suit against MCI Worldcom, and TTI National, Inc. ("TTI"). Defendants in that suit removed it from the Superior Court of New Jersey to the United States District Court for the District of New Jersey. MCI Worldcom asserted counterclaims identical to the claims it asserts here.[2]

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successor and/or alter-ego of ABTS. Because the real parties in interest are MCI Worldcom and Intelnet, both successor corporations to the respective mergers between plaintiffs MCI and Worldcom and defendants Intelnet and ABTS, the court will refer to plaintiffs as "MCI Worldcom" and defendants as "Intelnet."

[2] Discovery was conducted in Federal Court in New Jersey for over a year under the supervision of three different judges.

Intelnet Int'l Corp., et al. v. Worldcom Techs., Inc., et al., Civ. No. L-2400-99 (N.J. Super. Ct. Law Div. filed April 1, 1999) ("Intelnet I"). In Intelnet I, Intelnet sued MCI Worldcom for intentional interference with business relations and slander. Intelnet alleged that MCI Worldcom desired to sell a telephone calling card plan to Costco, one of Intelnet's largest customers, but was precluded from doing so by the contract between Intelnet and Costco.[3] Intelnet claims that in order to sell the calling card plan, MCI Worldcom repeatedly represented to Costco and other Intelnet customers that Intelnet was about to go out of business and was not paying its bills, and MCI Worldcom threatened to disconnect service to those customers if they continued to honor their agreements with Intelnet. The following two cases were consolidated with Intelnet I:

1. The Zeron Suit

In May 1999, Zeron Group, Inc. ("Zeron") filed suit against Worldcom and TTI in the United States District Court for the Southern District of New York. Zeron asserted claims similar to Intelnet's that arose from the same set of operative facts. Zeron's suit was transferred to the United States District Court for the District of New Jersey, where it was consolidated with Intelnet I. Thus, Intelnet I now included as parties: Intelnet;

It consisted of interrogatories, requests for admission, and extensive document production.

[3] The parties refer to both "Costco" and "Price Costco." It appears to the court that these terms refer to the same entity. Hereinafter, the court will refer to both as "Costco."

ABTS; MCI Worldcom; TTI; and Zeron. In April 2000, Intelnet I was remanded to state court for lack of subject matter jurisdiction over the plaintiffs' claims. Intelnet Int'l Corp., et al. v. Worldcom Techs., Inc. et al., Civ. No. 99-2273 (D.N.J. April 10, 2000).

2. Intelnet's Suit Against Costco

Also, back in December 1998, Intelnet filed suit in the Superior Court of New Jersey against Costco for breach of the Intelnet-Costco agreement, which forms the basis of Intelnet's claims against MCI Worldcom in Intelnet I.[4] Inntraport (f/k/a Intelnet) v. Costco v. Worldcom Techs. and TTI Nat'l, Inc., Civ. No. L-9572-98 (N.J. Super. Ct.). In that case, Costco impleaded Worldcom and TTI as third-party defendants. In response, Worldcom asserted counterclaims against Intelnet that are virtually identical to its claims in Intelnet I and the instant case. In November 2000, the Superior Court of New Jersey consolidated that case with Intelnet I.

B. The Instant Case: Intelnet II

On May 8, 2000, MCI Worldcom filed its Complaint in this court ("Intelnet II"). Defendants moved the court to transfer venue, or, in the alternative, to abstain from exercising jurisdiction until the disposition of Intelnet I. The motion was denied was denied because, inter alia, MCI Worldcom submitted a letter indicating that Intelnet I was closed on the Superior

[4] Intelnet refers to this December 1998 New Jersey lawsuit against Costco as "Intelnet III."

Court of New Jersey's docket. (Order dated Oct. 2, 2000). Thus, it appeared that there was no reason to abstain. Apparently, however, due to a clerical error, the case merely had not been re-opened following remand. Intelnet I has since been reinstated, and thus has been an ongoing matter since April 1999. Accordingly, Intelnet asks the court to reconsider the denial of Intelnet's motion to abstain.

II. LEGAL STANDARD

Whether to grant a Rule 59(e) motion is within the discretion of the trial court. Kiewet E. Co. v. L & R Constr. Co., Inc., 44 F.3d 1194, 1204 (3d Cir. 1995). "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). "Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly." Cont'l Cas. Co. v. Diversified Indus., Inc., 884 F.Supp. 937, 943 (E.D. Pa. 1995). Courts will reconsider an issue only "when there has been an intervening change in the controlling law, when new evidence has become available, or when there is a need to correct a clear error or prevent manifest injustice." NL Indus., Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n. 8 (3d Cir. 1995). Mere dissatisfaction with the court's ruling is not a proper basis for reconsideration. Glendon Energy Co. v. Borough of Glendon, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993).

III. DISCUSSION

Intelnet contends that the court should abstain from exercising jurisdiction pursuant to the Colorado River Doctrine. See, e.g. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) (discussing doctrine).

The Colorado River Doctrine permits federal courts to abstain from exercising jurisdiction over a dispute in favor of parallel state proceedings in exceptional circumstances. Colorado River, 424 U.S. at 817. Unlike the traditional bases of abstention that arise from concerns of constitutionality or comity, Colorado River abstention rests on "considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." Franklin Mint Co. v. Camdex Int'l, Inc., Civ. No. 99-4170, 2000 WL 274010, at *7 (E.D. Pa. Mar. 9, 2000) (quoting Colorado River, 424 U.S. at 817); Advanced Rehab Sys., Inc., v. First Star Sav. Bank, Civ. No. 99-4573, 1999 WL 1017062, at *2 (E.D. Pa. Nov. 3, 1999). Because federal courts have a virtually unflagging obligation to exercise jurisdiction, the doctrine is very limited. Ryan v. Johnson, 115 F.3d 193, 195 (3d Cir. 1997).

A. Threshold Requirement: Parallel Proceedings

As a threshold matter, Colorado River abstention is only appropriate where the federal and state cases are "parallel." Id. at 196. Cases are parallel when they involve the same parties and claims, or when they are substantially identical,

essentially identical, or raise nearly identical allegations and issues. Advanced Rehab, 1999 WL 1017062, at *2 (quoting Ryan, 115 F.3d at 196, and Trent v. Dial Med. of Fla., Inc., 33 F.3d 217, 223 (3d Cir. 1994)). Neither the reversal of roles nor the presence of additional parties destroys the parallel nature of the actions. CFI of Wis., Inc. v. Wilfran Agric. Indus., Inc., Civ. No. 99-1322, 1999 U.S. Dist. LEXIS 16896, at *4 (E.D. Pa. Nov. 2, 1999) (citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 7 (1983) and Peerless Heater Co. v. Chevron Chem. Co., Civ. No. 97-3128, 1998 U.S. Dist. LEXIS 4032, at *2 (E.D. Pa. Mar. 27, 1998)). In the instant case, there is no dispute that the proceedings here in the Eastern District of Pennsylvania and the proceedings in New Jersey state court are parallel.

B. The Colorado River Abstention Test

Colorado River and its progeny set forth six factors for the court to weigh to determine whether exceptional circumstances exist warranting abstention: (1) whether either court has assumed jurisdiction over any property at issue; (2) the inconvenience of the federal forum; (3) the avoidance of piecemeal litigation; (4) the order in which the courts obtained jurisdiction; (5) which forum's substantive law governs the merits of the litigation; and (6) the adequacy of the state forum to protect the parties' rights. Moses H. Cone, 460 U.S. at 23; Colorado River, 424 U.S. at 818. No single factor is necessarily determinative. Advanced Rehab, 1999 WL 1017062, at *2. The determination does "not rest

upon a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case, with the balance heavily weighted in favor of jurisdiction." Moses H. Cone, 460 U.S. at 16.

In the instant case, the first factor is immaterial as neither this court nor the Superior Court of New Jersey have exercised control over any property.

The second factor, the inconvenience of the federal forum, does not favor abstention. Camden is practically a stone's throw across the Delaware River from this courthouse. The exercise of jurisdiction by this court will cause, at most, only minimal inconvenience to the parties. See CFI, 1999 U.S. Dist. LEXIS 16896, at *7 (stating that no inconvenience where federal courthouse located in Philadelphia and state courthouse in West Chester, Pennsylvania); Klaudo and Nunno Enters., Inc. v. Hereford Assocs., Inc., 723 F. Supp. 336, 346 (E.D. Pa. 1989) (holding that "inconvenience" factor was neutral where federal court was in Philadelphia and state court in Cape May County, New Jersey). Just because the New Jersey forum may be more convenient does not render this forum inconvenient. Franklin Mint Co., 2000 WL 274010, at *7.

Third, although abstention would certainly foster the avoidance of piecemeal litigation, this factor is not satisfied by the mere existence of concurrent state-federal litigation. Ryan, 115 F.3d at 198. Rather, this factor is only satisfied where there exists a strongly articulated congressional policy

against piecemeal litigation in the specific context of the case under review. Id.; Spring City Corp. v. Am. Bldgs. Co., 193 F.3d 165, 172 (3d Cir. 1999). The Third Circuit "has expressed strong disapproval of lightly granting abstention under Colorado River to avoid piecemeal litigation."[5] Schmidt, Long & Assoc., Inc. v. Aetna U.S. Healthcare, Inc., Civ. No. 00-3683, 2000 U.S. Dist. LEXIS 17355, at *18 (E.D. Pa. Dec. 5, 2000). Intelnet has not identified any strong congressional policy against piecemeal litigation in the context of this case. See Ky. W. Va. Gas Co. v. Pa. Pub. Util. Comm'n, 791 F.2d 1111, 1118 (3d Cir. 1986) (denying abstention because defendant had "not pointed to any Congressional legislation . . . that evinces 'a tempering of the policy of enforcing the plaintiff's choice of a federal forum in favor of a policy of avoiding duplicative or inconvenient litigation'") (quoting Harris v. Pernsley, 755 F.2d 338, 345 (3d

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[5] For example, the Third Circuit stated that:

> [I]f the mere possibility of concurrent state-federal litigation satisfies Colorado River's "piecemeal adjudication" test, the test becomes so broad that it swallows up the century old principle . . . that "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction. . . ." Colorado River, 424 U.S. at 817. If this were the law, it is difficult to conceive of any parallel state litigation that would not satisfy the "piecemeal litigation" factor and militate in favor of Colorado River abstention. If that is true, then the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them" . . . would effectively be eviscerated, a result we cannot presume either the Supreme Court or this court to have intended.

Ryan, 115 F.3d at 198.

Cir. 1985)). Thus, although the instant case and the litigation in the Superior Court of New Jersey "would most appropriately have been brought as a single suit, the context of the instant federal action does not implicate a 'strongly articulated congressional policy against piecemeal litigation.'" Schmidt, Long & Assoc., Inc., 2000 U.S. Dist. LEXIS 17355, at *19 (quoting Ryan, 115 F.3d at 198).

As to the fourth factor, the New Jersey litigation began well before the Complaint was filed in the instant case, and it appears that discovery has progressed much further in the New Jersey litigation. However, because this court is confident that it can establish procedures which minimize duplication of effort, particularly with regard to discovery, this factor is entitled to little weight.

With regard to the fifth factor, Intelnet asserts that the federal question involved in this litigation is merely based on the tariffs filed by MCI Worldcom with the FCC, and that otherwise the litigation is a simple collection action. Although the issue is not thoroughly briefed by the parties, it appears that both federal and state law may be critical to the merits of the litigation. See MCI Telecomms. Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1096 (3d Cir. 1995) (holding that state law claims by carrier for collection of unpaid charges for long distance telephone service under FCC tariff "arise under" federal law); Oh v. AT & T Corp., 76 F. Supp. 2d 551, 555-56 (D.N.J. 1999) (holding that state law claims of, inter alia, breach of

contract, fraud and negligent misrepresentation grounded upon rights found in tariff arise under federal law). The presence of federal issues militates against abstention. Ryan, 115 F.3d at 199 (citing Moses H. Cone, 460 U.S. at 26). Furthermore, to the extent that state law may be critical, "abstention cannot be justified merely because a case arises . . . under state law." Id. In the instant case, which apparently involves issues of both state and federal law, the presence of state law issues does not weigh very heavily in favor of abstention. Intelnet has not asserted that this case involves an intricate or unsettled question of state law, and due to its routine exercise of diversity jurisdiction, this court is accustomed to predicting how state courts would rule on particular state law issues.

The sixth factor, adequacy of the state forum to protect the parties' rights, is generally only relevant when that forum is inadequate. Ryan, 115 F.3d at 200; CFI, 1999 U.S. Dist. LEXIS 16896, at *10. There is no indication that the Superior Court of New Jersey is an inadequate forum. Thus, this factor is irrelevant.

A careful weighing of these factors leads the court to conclude that Intelnet has failed to demonstrate exceptional circumstances warranting Colorado River abstention. Accordingly, the court will not abstain from exercising jurisdiction over this case.

IV. CONCLUSION

For the foregoing reasons, the court will deny Intelnet's Motion for Reconsideration.

An appropriate Order follows.

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ORDER

AND NOW, TO WIT, this day of February, 2001, upon consideration of defendants Intelnet International, Inc., et al.'s Motion to Reconsider Defendants' Motion for This Court to Abstain from Exercising Jurisdiction Over This Matter; plaintiffs Worldcom Technologies, Inc., et al.'s Brief in Opposition thereto; defendants' reply to plaintiffs' brief; and defendants' supplemental memorandum, IT IS ORDERED that said motion is DENIED.

LOUIS C. BECHTLE, J.